IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7012 OF 2005

Vithu Laxman Dhangar. . .. Petitioner.

vs.

Dattatraya Waman Prabhu .. Respondents.

Mr. G. N. Salunke for petitioner.

Mr. A.S. Khandeparkar for respondent.

CORAM : S.U. KAMDAR, J.

DATE : 23rd November, 2005.

P.C.:

. The order challenged in the present petition is dated 29.3.2005 in civil Misc. Application No. 60 of 2004. By the present application the petitioner has sought to condone the delay in filing the appeal. There is a delay of around 10 to 11 months. He has given a ground that he was unwell and his advocate did not disclose to him that the matter has been decided ex-parte. The learned appellate court has dismissed the application after recording evidence. I am of the opinion that the condonation of delay application ought to have been granted because it is well settled that the power of

condonation of delay should be liberally exercised under section 5 of the Limitation Act so as to do substantive justice. Once there is a ground given for condonation of delay which is fairly probable then the Court ought to have granted the relief. I am, therefore, of the opinion that by putting the petitioner on the terms of costs the delay can be condoned. In that light of the matter I set aside the order passed by the District Judge, Sinddhudurg dated 29.3.2005 in Civil Misc. Application No. 60 of 2004. I make the Civil Misc. Application No. 60 of 2004 for condonation of delay absolute.

2. In the facts of the present case, I am of the view that the appeal pending before the District Judge, Sinddhudurg be expedited and heard expeditiously. I direct the District Judge, Sinddhudurg to decide the said pending appeal on or before 31.3.2006. The learned District Judge will take up the appeal after the petitioner complies with the order of costs of Rs. 1500/- which he should comply on or before 15.12.2005. Cost to be paid to the respondent. Petition disposed of in the aforesaid terms. Till the hearing and final disposal of the appeal, before the District Judge, the parties to maintain the status quo.